United States Court of Appeals

for the Second Circuit

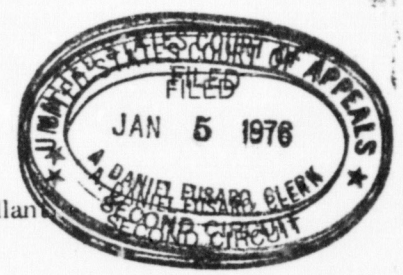
APPELLANT'S BRIEF

ORIGINAL

75-7672

United States Court of Appeals

For the Second Circuit.



PANAGANGELOS ANTYPAS,

Plaintiff-Appellant,

-against-

CIA. MARITIMA SAN BASILIO, S.A., and P.D. MARCHESSINI AND CO. (HELLAS) LTD. and P.D. MARCHESSINI AND CO. (NEW YORK), INC. and the SS EURYBATES, her boats, engines, tackle and apparel,

Defendants-Respondents.

B P/S

Appellant's Brief

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X DOCKET NO. 75-7672

PANAGANGELOS ANTYPAS,

Plaintiff-Appellant,

- against - : BRIEF FOR PLAINTIFF-APPELLANT

CIA. MARITIMA SAN BASILIO, S.A., and P.D. MARCHESSINI AND CO. (HELLAS) LTD. and P.D. MARCHESSINI AND CO. (NEW YORK), INC. and the SS EURYBATES, her boats, engines, tackle and apparel,

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PROCEEDINGS BELOW

This is an appeal from the decision and order of Judge CHARLES M. METZNER dated the 14th day of November 1975, granting defendants' application for summary judgment (46a)* declining jurisdiction on the basis of forum non conveniens.

THE FACTS

The plaintiff is a 32 year old seaman who sustained personal injury, consisting of the loss of an eye and other serious head injuries during the course of a voyage of the EURYBATES from the East Coast of the United States to the

* Reference is to the appendix unless otherwise stated.

Far East and return in the regular liner service of defendant in such service.

The defendant, CIA. MARITIMA SAN BASILIO (hereinafter "BASILIO") is a Panamanian corporation which owned the merchant vessel "EURYBATES" operated by it under a Greek flag. The EURYBATES was one of approximately eight vessels owned by defendants, their names all beginning with the prefix "EURY" (Exhibit 10), and operated for the owning corporation by P.D. MARCHESSINI & CO. (NEW YORK), INC., a New York corporation from an office at 26 Broadway, New York City, and piers at Staten Island and Brooklyn (Exhibits 9, 10). The vessels were so operated on two United States regulated liner services under the name of "MARCHESSINI LINES" (Exhibit 14).

"MARCHESSINI LINES" is a tradename owned by two corporations, the defendant CIA. MARITIMA SAN BASILIO, S.A. and SOCIED MARITIMA SAN NICHOLAS S.A., another Panama corporation (Exh. 14).

All of the capital stock of SAN BASILIO and SAN NICHOLAS was owned by a certain "PANAGHIS D. MARCHESSINI, his wife Helen and/or his two sons Dimitri and/or Alexander P. Marchessini" (Exhibit 13). Each of these persons were citizens of the United States (Exhibit 12).

The "joint service" operation under the name "MARCHESSINI LINES" was "on file with the Federal Maritime Commission" (Exhibit 14) and was a ". . . person subject to the Shipping Act of 1916" and ". . . subject to the Commission's jurisdiction

. . . to the extent that it operated in foreign commerce of the United States." (Exhibit 6, p. 2). Reference to the itinerary of the EURYBATES will show that during the year 1972, the EURYBATES operated alternatively on the two liner services constituting the "MARCHESSINI LINES"; the service from East Coast United States to Europe and return, and East Coast United States to the Far East and return. Thus, during the year 1972, the entire operation of the EURYBATES was in "foreign commerce of the United States".(30a-31a).

The plaintiff's affidavits in opposition below, incorporated likewise other proof that the "MARCHESSINI LINES" operation was conducted for SAN BASILIO, by P.D. MARCHESSINI & CO. (NEW YORK), INC. from its offices at New York; thus see Exhibits 1 and 9, advertisements disclosing a substantial integrated shipping operation operated from 26 Broadway, New York; thus see the extract from Lloyd's Register Book of "Owners", showing the shipowners' address to be 26 Broadway, New York (Exhibit 10); thus see Exhibit 2, advertising the European service of "MARCHESSINI LINES", and Exhibit 3 advertising the Far East service; thus see Exhibit 4, showing the filing of Tariff's for the European service with the Federal Maritime Commission and Exhibit 5 showing similar filing for the Far East service; see Exhibit 7, a sample of advertising in New York Times; and see also Exhibit 8, an example of a voyage account rendered by P.D. MARCHESSINI &

CO. (NEW YORK), INC. for SAN BASILIO, not for the EURYBATES but for the EURYTAN, another "MARCHESSINI LINE" vessel. Similar accounts maintained by P.D. MARCHESSINI & CO. for the EURYBATES were demanded in discovery proceedings but not produced by defendants (33a-34a).

It is not denied that this Exhibit 8, is representative of what the proper account for the EURYBATES would show. This account shows the collection of all the earnings of the vessel by MARCHESSINI & CO. (NEW YORK) INC., the expenditure by it of any money necessary for the operation of the vessel, and the sums left over such expenditures, constituting the profit for the respective voyages (32a-33a).

Defendants dispute that P.D. MARCHESSINI, his wife and sons were United States citizens in 1972. The affidavit of counsel (13a) and GEORGANDOPOULOS (22a) without any indication of the source of this knowledge, allege that no American citizens are stockholders of BASILIO. This is not evidence admissible at trial. No valid proof, i.e., proof from the State Department or even by P.D. MARCHESSINI himself was educed.

Significantly, the moving affidavits do not deny that BASILIO was doing business through MARCHESSINI, New York, although the claim is made with respect to MARCHESSINI (HELLAS) and MARCHESSINI (LONDON).

THE OPINION BELOW

It is respectfully submitted that error was committed by the Court below in holding:

1. That the contacts of the transaction with the United States were "minimal", and not sufficiently substantial so as to invoke the Jones Act;

2. That the plaintiff had failed to distinguish a different case decided in favor of the same defendant entitled Garis v. San Basilio, 386 F.2d 155;

3. In failing to hold on this motion for summary judgment that a bona fide issue of fact had been presented as to whether the contacts of the transaction with the United States "were sufficiently substantial" so as to require denial of the motion for summary judgment; and

4. In failing to hold that in the presence of a showing of "substantial contacts of the transaction with the United States" the Court is without authority to decline jurisdiction.

POINT I

UNDER THE DECISIONS OF THIS, AND THE SUPREME COURT, IT WAS ERROR TO DECLINE JURISDICTION.

The record herein, if not disproven would justify the following findings of fact:

1. That SAN BASILIO, through P.D. MARCHESSINI (NEW YORK) INC. operated the EURYBATES from a principal office at 26 Broadway, New York.

2. That such vessel was at all such times operated in foreign commerce of the United States pursuant to the Shipping Act of 1916 (46 U.S.C.A. 801 et seq.);

3. That at all such times all the stock of SAN BASILIO was owned by citizens of the United States;

4. That at all such times SAN BASILIO was a "commercial allegiant" of the United States;

5. That the contacts of SAN BASILIO in the operation of the EURYBATES were substantial.

This Court in the case of Bartholomew v. Universe Tankships Inc., 263 F.2d 437 stated at page 440:

> "It is apparent then that the contacts considered most vital in one case are not necessarily of controlling importance in another.
>
> "[1] Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. Thus we conclude that the test is that "substantial" contacts are necessary. And while as indicated supra one contact such as the fact that the vessel flies the American flag may alone be sufficient, this is no more than to say that in such a case the contact is so obviously substantial as to render unnecessary a further probing into the facts."

This holding of this Court was approved and reiterated by the Supreme Court in Hellenic Lines Ltd. v. Rhoditis, 398 U.S. 306, 310, and again followed by the Court of Appeals for this

Circuit in Moncada v. Lemuria S.S. Co., 491 F.2d 470, 472. Thus, in the presence of "substantial" contacts, regardless of the vessel's flag, our Courts will apply the Jones Act.

Nor is the question of the sufficiency of the contacts a matter submitted to the discretion of the District Court pursuant to the doctrine of forum non conveniens. The Court of Appeals, Bartholomew v. Universe Tankships Inc., 263 F.2d 437 stated at page 443:

> "Moreover, this is not a matter resting in the discretion of the trial judge, as seems to have been thought to be the case here. The facts either warrant the application of the Jones Act or they do not. Under 28 U.S.C. §1331, once federal law is found applicable the court's power to adjudicate must be exercised. While at times the impact of intricate questions of state law may require a federal court to stay its hand, Burford v. Sun Oil Co., 1943, 319 U.S. 315, 63 S.Ct. 1098, 87 L.Ed. 1424, abd we need not attempt to catalogue other exceptional situations, it is clear that the District Court in the instant case had no discretionary power to refuse to adjudicate the case."

Forum non conveniens, a discretionary remedy, therefore, does not apply. As in Bartholomew, "The facts either warrant the application of the Jones Act or they do not."

POINT II

THE FACTS HEREIN REQUIRED THE APPLICATION OF THE JONES ACT.

In the earlier case of Lauritzen v. Larsen, 345 U.S. 571,

the Supreme Court indicated seven areas that might be relevant to the determination of whether or not the Jones Act might be relevant. It has since become quite apparent that the decisional process does not consist of counting how many of these seven are present. As stated in Bartholomew, supra, just one could in a proper case be sufficient. Also it is now clear that facts other than those enumerated in Lauritzen could themselves provide the "substantiality" necessary to require that the Court treat the case as a Jones Act case. With these tenets in mind we submit that the present record requires the retention of this case as a Jones Act case.

In Pavlou v. Ocean Traders Marine Corporation, 211 F. Supp. 320, in a decision by Judge CROAKE, cited with approval in Hellenic Lines Ltd. v. Rhoditis, supra, the single factor that was held to require the application of the Jones Act was the showing, like the one made herein, that the operation was conducted from a base in the City of New York.

Indeed, the factual showing in the instant case was considerably stronger than the showing in Pavlou. Herein was submitted proof not only of an address in the City (Exhibit 10) for the owner and general agent (Ex. 1,5,8,9,10) through which the owner operated, but proof of the collection of the vessels' earnings here (Exhibit 8) and expenditure from such earnings

of the running expenses of operating the vessel. Indeed, in both Hellenic Lines Ltd. v. Rhoditis, supra and Moncada v. Lemuria, supra, the principal factor in both cases was the base of operation in the United States.

If the Pavlou case was correctly decided, then it follows that the instant case must be remitted to the district court for further determination, especially since, as will appear, other factors of substantiality are likewise present.

In Bobolakis v. Compania Panamena Maritima San Gerassimo, 168 F.Supp. 236, decided by Judge Irving R. Kaufman as a District Judge, the fact that the controlling stockholder of the Panamanian corporation that owned the vessel was a United States citizen was deemed sufficient to require the application of the Jones Act. This holding was cited with approval in Bartholomew v. Universe Tankships Inc. So too herein, the plaintiff has submitted documentary proof that the controlling stockholders were United States citizens (Ex. 12,13) True, the moving papers claim otherwise, but on proof substantial enough to do no more than raise a question of fact. As will be discussed later, this is but a motion for summary judgment, and in the presence of an issue of fact denial of the motion follows, not dismissal of the complaint. This proof on plaintiff's part was itself sufficient to require denial of the defendants' motion.

Additionally there is the proven fact that the vessel herein, as well as other vessels of this defendant, were being operated in foreign commerce of the United States, with permission to do so pursuant to the Shipping Act of 1916, (46 U.S.C.A. 815), thus gaining the right to fix rates otherwise in violation of the Anti-Trust laws. Federal Maritime Board v. Isbrandtsen, 356 U.S. 481, 490.

POINT III

IN THE PRESENCE OF A BONA FIDE ISSUE OF FACT SUMMARY JUDGMENT DOES NOT LIE.

The ultimate issue for determination in this case is one of conflict of laws; is the Jones Act applicable, or is some other law applicable. The opinion of Judge Medina in Bartholomew v. Universe Tankships Inc., quoted heretofore makes this determination one of fact. (263 F.2d 441).

The plaintiff has come forward with evidence admissable on a trial showing that the operation was conducted from 26 Broadway, New York, that the revenues of the vessel were collected here, that the expenses of operating the vessel were paid from these revenues, that the profits deriving from excess of revenues over expenditures were deposited here and that the stockholders of both the owning and the operating company were United States citizens. Further we have proven that these two defendants were operating the vessel in foreign commerce of the United States in such fashion as to receive immunity from the anti-trust laws of the United States to which they would otherwise be subject. These facts have been held in

the "aggregate" 263 F.2d 442) sufficiently "substantial" to warrant application of the Jones Act.

Nor can it be said that the moving papers disprove the evidentiary showing above. The affidavits of counsel, Ganteaume and Georgandopoulos, purporting to deal with where the principal office of the operation was located and what was done at this or any other office speak only in the most general and evanescent of terms.*

The alien citizenship of the stockholders of BASILIO is claimed in the affidavits of counsel and Georgandopoulos, but neither affidavit shows the basis of the affiant knowledge or indicates that evidence admissible on a trial is being referred to.

With respect to plaintiff's showing that the defendant is engaged in foreign commerce of the United States, no denial is had. Accepting and in fact actively securing the benefits of United States law, the defendants should likewise be bound by its obligations. Hellenic Lines v. Rhoditis, 412 F.2d 919, 925, aff'd 398 U.S. 306, 310.

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* It is still the rule that summary judgment may not be granted in the presence of a bona fide issue of relevant fact. Heyman v. Commerced Industry (Ca.2) 10/24/75 (not yet reported). Affidavits to have credence on such a motion must be on knowledge of the affiant and indicate the presence of admissible evidence. Dresser v. The Sand Piper (Ca.2) 331 F.2d 130, 143.

The district court then goes on to do what the Court of Appeals said should not be done, that is to balance the negative factors alleged (though not all proven to exist)* against the positive connections with the United States (263 F.2d 437).

It is likewise noteworthy that the lower court leans heavily, among the negative factors, upon the alleged existence of "Greek ship's articles which provide for disputes to be settled according to Greek law". In point of fact there are no articles - Greek ships don't use them. Furthermore, it is beyond dispute that in a Jones Act case the provision for settlement of disputes according to Greek law, is void. Hellenic Lines Ltd. v. Rhoditis, 339 U.S. 306; Krenger v. Penn Railroad, 174 F.2d 556; Pandazopoulos v. Universal Cruise Lines, Inc. 365 F.Supp. 208, 211; Voyiatzis v. National Shipping and Trading Corp., 199 F. Supp. 920, 925; Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320, 322; Rodriquez v. Solar Shipping Ltd., 169 F. Supp. 79; Retzekas v. Vygla S.S. Co., 193 F.Supp. 259; Blanco v. Phoenix Cia. de Navegacion, S.A., 304 F.2d 13, 14, 15; Gomez v. Karavias U.S.A. Inc., 401 F.Supp. 104, 107.

* Indicative of the weight to be accorded defendants' affidavits is the fact that counsel's affidavit alleges that the flag and registration are Liberian (14a) whereas they are in fact Greek.

Further negating the propriety of summary judgment in this case was the failure of the defendants to produce records in their control (33a). If nothing else, Rule 56 (f) of the Rules of Civil Procedure should have required denial until plaintiff had an opportunity for further disclosure.

POINT IV

IN A CASE SUCH AS THE PRESENT SUMMARY JUDGMENT AND FORUM NON CONVENIENS ARE MUTUALLY EXCLUSIVE REMEDIES.

The Notice of Motion pursuant to which the lower court ". . . dismissed on the ground of forum non conveniens . . ." (48a) sought relief ". . . granting summary judgment in favor of the defendants upon the further grounds of forum non conveniens." (11a) It is respectfully submitted that summary judgment is not available in a case properly invoking the Jones Act.

As this court stated in Bartholomew, supra (263 F.2d 443)

> "The facts either warrant the application of the Jones Act or they do not."

If they do not, no question of forum non conveniens arises. Presumably on summary judgment the complaint will be dismissed or leave granted to replead. The further statement in Bartholomew that the impact of intricate questions of state law might require a Federal court to stay its hand (263 F.2d 443) would require the same result on an issue of fact. Assuming

the worse, that the plaintiff has in fact tendered an issue of fact, summary judgment should be denied. Heyman v. Commerce & Industry Insurance Co., (Ca. 2) decided October 24, 1975 (not yet reported).

Plaintiff has presented factual evidence justifying the conclusion if believed by the court that the defendants' operation was principally conducted from an office in New York, and that the defendants and particularly BASILIO and MARCHESSINI (NEW YORK) were stock controlled by citizens of the United States. The denials by the defendants of previous proof in these respects creates issues of fact.

In Heyman v. Commerce & Industry Insurance Co., supra, this Cour stated:

> "But, the 'fundamental maxim' remains that on a motion for summary judgment the court cannot try issues of fact; it can only determine whether there are issues to be tried. American Manuf. Mutual Ins. Co. v. American Broadcasting-Paramount Theatres, Inc., 388 F.2d 272, 279 (2d Cir. 1967); Cali v. Eastern Airlines, Inc., 442 F.2d 65, 71 (2d Cir. 1971). Moreover, when the court considers a motion for summary judgment, it must resolve all ambiguities and draw all reasonable inferences in favor of the party against whom summary judgment is sought, United States v. Diebold, Inc., 369 U.S. 654, 655 (1962), with the burden on the moving party to demonstrate the absence of any material factual issue genuinely in dispute, Adickes v. Kress & Co., 398 U.S. 144, 157 (1970). This rule is clearly appropriate, given the nature of summary judgment. This procedural weapon is a drastic device since its prophylactic function, when exercised cuts off a party's right to present his case to the jury. Donnelly v. Guion, 467 F.2d 290, 291 (2d Cir. 1972)."

Summary judgment in the instant case should not have been granted.

Assuming arguendo that forum non conveniens could apply herein, it is nonetheless submitted that pursuant to the holdings of the Supreme Court it would be quite inappropriate here. In Norwood v. Kirkpatrick, 349 U.S. 31, the Supreme Court stated with respect to 1404(a) and frum non conveniens at page 32:

> ". . . Congress, in writing §1404(a), which was an entirely new section, was revising as well as codifying. The harshest result of the application of the old doctrine of forum non conveniens, dismissal of the action, was eliminated by the provision in §1404(a) for transfer."

In Blaski v. Hoffman, 363 U.S. 335, 343, the Supreme Court stated that "transfer" was not permissible unless the transferee Court was one in which the plaintiff could have sued the defendant for the same relief in the first place. "The conduct of the defendant after the action is brought cannot add to the forums 'where it might have been brought'" (363 U.S. 343).

The vice of dismissal is here sought to be obviated by defendants' offer, accepted by the Court, if not the plaintiff, to appear in an action in Greece. But this offer neither fairly meets the problem or the holding of the Supreme Court in Blaski, supra.

The Supreme Court in Hellenic Lines, Ltd. v. Rhoditis, noted that the plaintiff in fact had a remedy in Greece, 398 U.S. 310, under Greek law, but of course not the Jones Act remedy here sought to be enforced. It is now established

Greek law that a Greek court will not apply American law in the case of a seaman.

Thus, what is really sought is a form of reverse forum shopping. The plaintiff can assert his Jones Act claim nowhere but in the Southern District of New York. The defendant by seeking transfer seeks transfer contrary to the intention of 1404(a), but additionally to a place where he cannot have the remedy he seeks to assert.

In Pavlou v. Ocean Traders Marine Corp., 211 F. Supp. 320, Judge Croake said at page 322:

> "Defendants rely on Gulf Oil v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947) and Mattolese v. Kaufman, 176 F.2d 201 (2d Cir. 1949). These cases involved the dismissal of action on the grounds that there were other forums within the United States, either federal of state, which were more appropriate for the adjudication of the controversy involving the application of the laws of the United States. It is quite another matter to contend that a litigant who has a right created under the laws of the United States may, because of facts and circumstances related to convenience and problems of proof, be relegated to a forum outside of this country." (Emphasis added.)

If fairness be test of what is to be accomplished, it can hardly be achieved if the plaintiff is permitted to be forum shopped out of the only jurisdiction where he can assert his congressionally granted remedy; a remedy affected with the public policy of the United States.

POINT V

THE LOWER COURT ERRONEOUSLY RELIED UPON GARIS V. CIA. MARITIMA SAN BASILIO, 386 F.2d 155

Concluding its opinion purporting to decline jurisdiction the lower court stated (47-48a)

> "In fact, plaintiff has failed to distinguish the facts relating to the ownership and operation of the SS Eurybates by Cia. Maritima San Basilio, S.A. from those found to be true concerning its ownership and operation of another vessel in Garis v. Compania San Basilio, SA. 386 F.2d 155 (2nd Cir. 1967)."

It is of course true that the Garis and instant case are between different parties for different matters so that no question of res judicata obtains.

Nonetheless, it is important to point out that the two cases are clearly distinguishable in manners that are dispositive of the alleged relevance of Garis. These are:

1. This Court's view of the law has changed since the Garis decision, and
2. The facts brought to the attention of the Court in this case were not brought to the Court's attention in Garis.

What has since become the settled law on this subject was set forth in 1959 in the case of Bartholomew v. Universe Tankships Inc. In 1969, in Tjonaman v. A/S Glittre, 340 F.2d 290, a Dutch seaman serving aboard a Norwegian flag vessel, this

court stated, in a case having practically no contacts of significance with this country, that the Bartholomew doctrine was limited by what had been stated in Lauritzen v. Larsen, and affirmed the dismissal below.

In 1966, the case of Tsakonites v. Hellenic Lines Ltd., 368 F.2d 426 came before this court. Despite contacts, later to be held "substantial" by the Supreme Court in Hellenic Lines Ltd. v. Rhoditis, this court citing Tjonaman (368 F.2d 429) held that the law of the flag was still the paramount factor to be considered, stating also that "international comity" required respect for an alleged collective agreement providing for determination in Greece according to Greek law, and affirmed the dismissal below.

This was the status of the law when the Garis case cited by the lower court came to this Court in 1967. Tjonaman and Tsakonites had apparently receded from the firm holding of Bartholomew that in the presence of substantial contacts the court had no discretion to exercise, and in the Garis case, both the lower and this Court treated the matter as entirely one of discretion (386 F.2d 155, 157). Nor does it appear that counsel for Garis argued that the matter was other than discretionary.

In 1970, because of the discrepancy between the holding of this Circuit in Tsakonites, and the 5th Circuit in Rhoditis, the matter came before the Supreme Court which expressly overruled Tsakonites, and expressly affirmed the holding of this

Court in Bartholomew, and of Judge Croake in Pavlou, thus overruling the decisions in Tjonaman, Tsakonites and Garis.

Obviously between the time of Garis and the decision of the lower court there had been a substantial change in the law as understood by this Court (See Moncada v. Lemuria 491 F.2d 470) thus distinguishing the old Garis case at once.

Not only was the Garis case distinguishable on the law, but, the evidence submitted to the lower court herein was both different and more than that submitted to the court in Garis.

Thus the proof of the operation of all the vessels, and in particular this vessel from New York (Exhibits 1,2,3,7,8, 9 and 10) were all new and additional.

The certificate by Panaghis D. Marchessini to the Chase Manhattan Bank (Exhibit 13) stating that he and his family were United States citizens and the sole stockholders of Basilio was new.

All of the proof relating to the participation of Marchessini Lines in foreign commerce of the United States and with it immunity from the anti-trust laws of the United States (Exhibits 4, 5 and 6) is new and was not before the court in Garis.

Whereas in Garis the court gave credence to the claim of

the shipowner that the "general agent" was a London company on the basis of a document put before it by the defendant (261 F.Supp. 919) in the present case we put before the Court (Exhibit 11, p. 3-5) whereby all the authority granted to the London company was granted to the New York Marchessini corporation. The two documents, executed the same day, may at least be deemed by the Court to be evidence of a wash transaction, made to hide the real operation from New York.

In the language of Heyman v. Commerce & Industry Insurance Co., supra the meaning of these two contracts when read together is at least a question of interpretation and therefore a question for trial as the interpretation of the contract was in the Heyman case. Thus, this Court stated in the Heyman case:

> "Where contractual language is susceptible of at least two fairly reasonable interpretations, this presents a truable issue of fact, and summary judgment would be improper. Aetna Casualty & Surety Co. v. Giesow, 412 F.2d 468, 471 (2d Cir. 1969); Painton & Co. v. Bourns, Inc., 442 F.2d 216, 233 (2d Cir. 1971); Lemelson v. Ideal Toy Corp., 408 F.2d 860, 863 (2d Cir. 1969); Union Insurance Society v. Wm. Gluckin & Co., 353 F.2d 946, 950-51 (2d Cir. 1965); Boro Hall Corp. v. General Motors Corp., 164 F.2d 770, 772 (2d Cir. 1947)."

In the case of Moncada v. Lemuria Shipping Co., 491 F.2d 470, decided by this Court, after Rhoditis, the fact that 40% of the voyages began or ended in the United States was deemed a matter of substantial significance. But in this case, be-

cause of the sole operation of the vessel on the two regular liner services of MARCHESSINI LINES, all the voyages of the vessel began and ended in the United States for the period of 6 months prior to and subsequent to the accident suffered by the plaintiff in June of 1972 (30a).

It should not be necessary to burden the Court further with examples. This case is different from Goris, both on the law and on the facts.

CONCLUSION

THE DECISION OF THE LOWER COURT SHOULD BE REVERSED AND THE MATTER REMANDED FOR FURTHER PROCEEDINGS.

LEBOVICI & SAFIR
Attorneys for Plaintiff-Appellant

HERBERT LEBOVICI
Of Counsel

LEBOVICI & SAFIR Antypas v. Cia Martima

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 5 day of Jan. , 1976 at No. 46 Trinity Pl., NYC deponent served the within Brief upon Poles, Tublin, Patestrides & Startakis, Esqs. the Appellees herein, by delivering 3 true copy thereof to each personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,
this 5day of Jan. 1976

Edward Bailey

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976